

2012-10-19 Hearing Transcript.txt

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1                               IN THE UNITED STATES DISTRICT COURT  
2                               NORTHERN DISTRICT OF ILLINOIS  
3                               EASTERN DIVISION  
3 JOHN WILEY & SONS, LTD., et al.,   )  
4                               Plaintiffs,                               )  
5                               vs.                               )  
6 MC DONNELL BOEHNEN HULBERT       )  
7                               & BERGOFF, et al.,                               )  
8                               Defendants.                               )

No. 12 C 1446  
Chicago, Illinois  
October 19, 2012  
10:30 a.m.

9                               TRANSCRIPT OF PROCEEDINGS  
10                              BEFORE THE HONORABLE CHARLES R. NORGLE, SR.

11 For the Plaintiffs:                   DUNNEGAN & SCILEPPI LLC  
12   350 Fifth Avenue  
13   New York, New York 10118  
14   BY: MR. WILLIAM I. DUNNEGAN

15 For the Defendants:                   KIRKLAND & ELLIS  
16   300 North LaSalle Street  
17   Chicago, Illinois 60654  
18   BY: MR. BARRY F. IRWIN

19 Official Court Reporter:           MAELLEN E. PITTMAN, FCRR, RDR  
20   219 South Dearborn Street  
21   Room 2342  
22   Chicago, Illinois 60604  
23   (312) 435-5576  
24  
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(Proceedings heard in open court:)

THE CLERK: Are there any matters on the 10:30 call  
where both counsel are present?

MS. MC GARRY: Wiley, we are both here.

THE COURT: Okay.

THE CLERK: 12 C 1446, John Wiley & Sons versus  
McDonnell, Boehnen, Hulbert & Bergoff.

Motion to compel.

MR. IRWIN: Hello, your Honor.

Barry Irwin for the defendant McDonnell Boehnen Hulbert &  
Bergoff.

THE COURT: Good morning.

MR. DUNNEGAN: Good morning, your Honor.

Bill Dunnegan and Annette McGarry for the plaintiffs.

THE COURT: Good morning.

I have the several motions before me.

I informed Mr. Fulbright to take appropriate steps to  
direct this matter to the assigned magistrate judge to deal with  
these pretrial issues.

As I see this case, it appears that it will be before  
the Court for a long period of time, involving numerous discovery  
issues. It starts out in a very contentious manner, and so  
directing it to the magistrate judge in the first instance would  
seem to be appropriate.

Ultimately, however, if the case were to go to trial, it

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would be tried by the district court unless you were to otherwise  
consent.

Now, one of the issues is Homeward Residential, Inc.'s  
motion to stay and compel arbitration, and incorporated

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5 memorandum in support. There is --  
6 THE CLERK: That's a different case.  
7 MS. MC GARRY: Your Honor, I think that's a different  
8 case.  
9 THE COURT: Excuse me. That's the wrong case. Too many  
10 pleadings.  
11 MS. MC GARRY: Your pile got mixed up.  
12 THE COURT: Right. You are correct. I have the  
13 remnants of a bench trial before me.  
14 MR. DUNNEGAN: We are flexible. We could work with that  
15 one too.  
16 THE COURT: But the long and short of it, we will get  
17 back to this. I now have the right motions that the magistrate  
18 judge will take the task of dealing with this case in the early  
19 stages, and that eventually if it does go to trial it will go to  
20 trial in the district court.  
21 Some of these issues will involve recommendations by the  
22 magistrate judge and not necessarily decide the issues. But at  
23 this early stage, and being unfamiliar with the file, I can't  
24 tell which that would be.  
25 So proceed before the magistrate judge. And I would say

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1 wait about two weeks before you get in touch up with the  
2 magistrate judge, and follow whatever schedule he or she may set.  
3 And, of course, the magistrate judge can act pursuant to  
4 the limits of his authority under the rules. But I want to  
5 assure you that when and if the case goes to trial, it will be in  
6 the district court.  
7 All right. So all of your motions are filed, taken

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8 under advisement. No briefing schedule is set by the district  
9 judge, they will be set by the magistrate judge.

10 Nothing would prevent you, however, from attempting to  
11 try to settle the case while you are before the magistrate judge.

12 MS. MC GARRY: Your Honor, with regards to the summary  
13 judgment motion that was filed this week --

14 THE COURT: On that particular issue, the magistrate  
15 judge will not deal with summary judgment.

16 MS. MC GARRY: Yes. You have entered a briefing  
17 schedule.

18 THE COURT: I have already done that. All right. So  
19 that would remain before the district judge.

20 MS. MC GARRY: Okay. One question.

21 The reply brief that was scheduled is due November 23rd,  
22 which is the Friday after Thanksgiving. And we were wondering if  
23 we could get that moved to November 27th, the Tuesday.

24 THE COURT: It is so ordered.

25 MS. MC GARRY: Thank you, your Honor.

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1 THE COURT: I don't think I had the calendar before me  
2 when I did that.

3 But the summary judgment will be before the district  
4 judge.

5 Is there enough discovery already produced to deal with  
6 summary judgment in this case?

7 MS. MC GARRY: If I can address that, your Honor, yes.

8 There are two issues raised by the summary judgment  
9 motion. One is raw law: Is laches a defense to the copyright  
10 infringement.

11 The second is is there any evidence of prejudice by the  
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12 defendants which would meet the element of laches if laches  
13 applies?

14 We have asked them two sets of interrogatories. We have  
15 come up with one sentence of prejudice. We're saying that's not  
16 sufficient.

17 THE COURT: All right. Now, on discovery that may go to  
18 summary judgment, that you can bring to the attention of the  
19 magistrate judge.

20 So when the motion for summary judgment is fully briefed  
21 with sufficient discovery having occurred, then the district  
22 court will rule.

23 But while this is in the processing stage, including  
24 discovery and production, and so on, those kinds of issues will  
25 be decided by the magistrate judge.

6

1 So when the final product is produced fully briefed, the  
2 district court will rule.

3 All right. Thank you, counsel.

4 MR. IRWIN: Thank you, your Honor.

5 MR. DONNEGAN: Thank you, your Honor.

6 MS. MC GARRY: Thank you, your Honor.

7 (Proceedings concluded.)

8 C E R T I F I C A T E

9 I, Maellen E. Pittman, do hereby certify that the  
10 foregoing is a complete, true, and accurate transcript of the  
11 proceedings had in the above-entitled case before the Honorable  
12 CHARLES R. NORGLÉ, SR., one of the judges of said Court, at  
13 Chicago, Illinois, on October 19, 2012.

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15                    2012-10-19 Hearing Transcript.txt  
16                    /s/ Maellen E. Pittman, FCRR, RDR  
17                    Official Court Reporter  
18                    United States District Court  
19                    Northern District of Illinois  
20                    Eastern Division  
21  
22  
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